IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 20870 of 2004

Between:

1 Dawoodi Bohra Saifi Masjid Anjuman-E-Qutbi,

Tirumalagiri, Secunderabad, rep. by Secretary
Shk. Abbas M. Khambatti.

2 Mohammadbhai Takhatwala, S/o Lokmanji,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.

3 Shabbirbhai Buta, S/o Saifuddin,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.

4 Aziz Miyajiwala, S/o Yakubbhai,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.

5 Burhanuddin Darbar S/o Salehbhai,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.

6 M. Mansoorbhai Sidhpurwala, S/o Mohd Ali,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.

7 Sk. Mansoorbhai Ujjainwala, S/o Nooruddin,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.

8 Firozbhai Rohawala, S/o Fakruddin,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
9 Moiz, S/o Tayyab Ali,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
10 Nafisa Hyderabadwala, W/o Moiz,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
11 Ali Asgarbhai Sidhpurwala, S/o.Mohammad Ali,

R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
12 Yousufbhai Badri, S/o Ibrahim,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
13 Abbas Tambawala, S/o Fida Hussain,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
14 Hakimbhai Jawawala, S/o Fida Ali,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
15 Younusbhai Vajihi, S/o Asgarbhai,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
16 Shabbirbhai Kanchawala, S/o. Musaji,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
17 Taiyeb Kanwatwala, S/o Abbasbhai,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
18 Zoher, S/o Abdul Hussain,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.

19 Fatema Miyajiwala, W/o Murtaza,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
20 Sk. Mohammedbhai Khambati, S/o Fida Ali,
R/o Burhani Rahaish (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal,
Secunderabad, Hyderabad District.
21 Ali Asger, S/o. Yakub Bhai Miyajiwala,
R/o Burhani Rahaiah (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal
Secunderabad, Hyderabad District

22 Abbas Bhai Vora, S/o.Fakruddin,

R/o Burhani Rahaiah (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal
Secunderabad, Hyderabad District
23 Kenanbhai Lehri, S/o Sujjauddin,
R/o Burhani Rahaiah (Housing) Association, Sy. No. 110/1, Tirumalgiri Village,
& Mandal
Secunderabad, Hyderabad District
24 Fakruddin Jawawala, S/o Fida Ali,
R/o Burhani Rahaiah (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal
Secunderabad, Hyderabad District
25 Mustafa Mohammedbhai Kunwarawala, S/o Mohammedbhai,
R/o Burhani Rahaiah (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal
Secunderabad, Hyderabad District
26 Yousufbhai Sohangpurwala, S/o Saifuddin,
R/o Burhani Rahaiah (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal
Secunderabad, Hyderabad District
27 Mustafabhai Abuwala, S/o Turab Ali,
R/o Burhani Rahaiah (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal
Secunderabad, Hyderabad District
28 Aziabhai Kagalwala, S/o Saifuddin,
R/o Burhani Rahaiah (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal
Secunderabad, Hyderabad District
29 Mustafabhai, S/o Calcuttawala,
R/o Burhani Rahaiah (Housing) Association, Sy. No. 110/1,

Tirumalgiri Village, & Mandal
Secunderabad, Hyderabad District

..... PETITIONERS

AND

1 The Government of A.P., rep by Principal Secretary,

Irrigation & CAD Department, Secretariat, Hyderabad.

2 The Superintending Engineer,

Irrigation & CAD, Water Bodies Management Circle, Hyderabad.

3 The Collector (Irrigation), Hyderabad.

4 The Mandal Revenue Officer, Tirumalagiri Mandal,

Tirumalagiri, Secunderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the initiation of action under the provisions of the A.P. (TA) Irrigation Act, 1357 Fasli against the petitioners by the 4th respondent by issuing proceedings in B/2976/04 dated 19-10-2004 and 20-10-2004 in respect of the petitioners' lands situated in Sy. No. 110/1 of Tirumalgiri Village and Mandal, Hyderabad District as illegal and arbitrary and consequently set aside the proceedings of the 4th respondent in B/2976/04 dated 19-10-2004 and 20-10-2004, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.ROY REDDY

Counsel for the Respondents: GP FOR IRRIGATION & COMM AREA DEV.

The Court made the following :

ORDER:

The petitioners who are 29 in number are residents of Burhani Rahaish (Housing) Association, Tirumalgiri Mandal and Village, Secunderabad. They are aggrieved by the notices issued under Section 49(1)(a) of the Andhra Pradesh (Telengana Area) Irrigation Act, 1357 Fasli (for short 'the Irrigation Act'). It is their case that the land admeasuring Acs.14.19 gts in Survey No.110/01 of Tirumalgiri Village is a private patta land and does not form shore land and therefore, the issue of impugned notices by the fourth respondent is totally illegal and unwarranted.

This Court while admitting the writ petitions suspended the impugned orders on 11.11.2004 in W.P.M.P.No.27334 of 2004. The respondents have now moved this

Court by filing W.V.M.P.No.879 of 2004. As this Court is of considered opinion that the petitioners have an effective alternative remedy, the matter was heard and is finally disposed of.

Notice issued to petitioner No.1 (all the notices issued to all the petitioners is of similar terms) reads as under.

–

NOTICE UNDER SECTION 49 (1) (a) OF THE ANDHRA PRADESH (TELENGANA AREA) IRRIGATION ACT 1357 FASLI

To

S.Anjuman-e-Qutbi

33-258(Mosque)

Burhani Rahaish Association, Tirumalgiri.

Whereas you are found to be in unauthorized occupation of the land specified in the schedule below which is the property of Government (Under Section 2 of Land Encroachment Act, 1905 Read with section 24 of Andhra Pradesh (Telengana Area) Land Revenue Act, 1317 Fasli. You are hereby given notice as to why you should not be evicted from the land Under Section 51 of the Andhra Pradesh (TA) Irrigation Act, 1357 Fasli, that if you so desire, you may, show cause either in person or in writing with all documents evidencing proof of your title over the lands mentioned below before me, within a period of (7) days failing which necessary orders will be passed exparte and the encroached on the below mentioned land will be removed and the costs incurred for removal of the encroachments will be recovered from you.

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S C H E D U L E

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Sl.No. Sy.No. Description Entire Occupied Nature of

and of land Extent extent occupation

Sub-

Division

1. 2. 3. 4. 5. 6.

110/1 submerged Ac. g. - Mosque

area 14 –19

in

FTL

-

-

-

-

-

Mandal Revenue Officer,

Trimulgherry.

In the opinion of this Court, though the fourth respondent refers to Section 24 of the Andhra Pradesh (Telengana Area) Land Revenue Act, 1317, Fasli, and Section 51 of the Irrigation Act, in essence, it is a notice issued under Section 7 of the A.P. Land Encroachment Act, 1905, by a Revenue Official for evicting an occupant whose occupation of Government land is allegedly objectionable. In such a case, unless and until, the fourth respondent receives explanation, he cannot pass an order of eviction under Section 6 of the A.P. Land Encroachment Act. As and when an order is passed, the petitioners have an effective remedy by way of an appeal under Section 10(1) of the A.P.Land Encroachment Act. Therefore, without expressing any opinion on merits of the case, this writ petition can be disposed of.

Accordingly, the writ petition is disposed of, giving liberty to the petitioners to submit the explanations to the impugned notices/orders to the fourth respondent within a period of two weeks from the date of receipt of a copy of this order. As and when

such explanation is submitted, the fourth respondent shall inspect the lands; consider the evidence that may be produced by the petitioners and pass appropriate orders within a period of four weeks thereafter. If any adverse order is passed, it shall be open to the petitioners to approach the Revenue Divisional Officer, under Section 10(1) of the A.P.Land Encroachment Act. Till then, if the petitioners are still in possession of the land, there shall be status quo as on today. This order of status quo shall be in operation till the petitioners obtain appropriate orders from the appellate authority namely, the Revenue Divisional Officer, Secunderabad Division, in case the order of the fourth respondent goes against them. There shall be no order as to costs.

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(V.V.S.RAO, J)

20.06.2005

vs

To

1 The Government of A.P., rep by Principal Secretary,

Irrigation & CAD Department, Secretariat, Hyderabad.

2 The Superintending Engineer,

Irrigation & CAD, Water Bodies Management Circle, Hyderabad.

3 The Collector (Irrigation), Hyderabad.

4 The Mandal Revenue Officer, Tirumalagiri Mandal,

Tirumalagiri, Secunderabad

5 Two CCs to the G.P for Irrigation & Comm. Area Dev., High Court

of A.P., Hyderabad(O.U.T).

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